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No. 95-1842

IN THE

Supreme Court of the United States

October Term, 1995

JOHN M. MERRETT AND CECILIA A. CLAYTON, as personal representative of the estate of Solomon Clayton, Jr., on their behalf and on behalf of all others similarly situated,

Petitioners

v.

JAMES T. MOORE, as Commissioner of the Florida Department of Law Enforcement; ROBERT DEMPSEY, individually; FRED O. DICKINSON, as Executive Director of the Florida Department of Highway Safety and Motor Vehicles; ROBERT BUTTERWORTH; and LAWRENCE CROW, JOHN M. ERVIN, and JERALD VAUGHN; CITY of LAKELAND POLICE DEPARTMENT; CITY of MAITLAND POLICE DEPARTMENT; and CITY of LARGO POLICE DEPARTMENT,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENTS MOORE, DEMPSEY, DICKINSON AND BUTTERWORTH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

Not often do petitioners so heavily rely on authority they so completely misunderstand. This Court's decision in *Whren v. United States*, __U.S.__, 64 U.S.L.W. 4409 (1996), removes any possible need for certiorari review of this case.

Stripped to its essence, *Whren* held that police officers who observed a vehicle committing a traffic infraction had probable cause to make a stop. Since they possessed probable cause, the Fourth Amendment was satisfied and any pretext

for the stop was irrelevant. *Id.*, 64 U.S.L.W. at 4411 ("[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." [italics original]).

Petitioners' misunderstanding arises from their failure to realize that the term "probable cause" is itself a form of shorthand. "Probable cause," as used in *Whren*, means the existence of a legally sufficient, independent basis for a stop; so that any pretext is irrelevant.

Here, Petitioners concede there was a legally sufficient, independent basis for the roadblock—to check for drivers licenses, vehicle registration, and safety equipment.[1] Since there was an independent and proper basis for the roadblock, any other motives or pretext are as irrelevant here as they were in *Whren*. That the police were also motivated by a desire to enforce drug trafficking laws simultaneously is—by analogy to *Whren*—irrelevant.

Beguiled by their own logic, Petitioners simply refuse to recognize that *Whren*, like the other cases they advance, involved the unanticipated stop of an individual vehicle. Here, the roadblock was conducted according to a pre-implementation plan, which did not discriminate or involve officer discretion. Until rush hour traffic became overwhelming, all cars were stopped. The dog-sniffs were conducted simultaneously with the license and registration checks. Other than their objection to the use of sniff-dogs at all, Petitioners' claims all involve inadvertent delays that are not of constitutional significance.

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1 In their initial brief (pp. 21–22) to the 11th Circuit, Petitioners said:

> Although police roadblocks established to conduct license...checks are lawful when properly conducted
>
> * * *
>
> Although FHP certainly could have conducted these license checks absent the FDLE's invalid purpose.

Whren implies pretext may be a concern when the stopping officers do not have probable cause. However, *Whren* is factually limited to unanticipated stops of individual vehicles. It simply does not require an inquiry into pretext as to a roadblock in which vehicle and drug trafficking laws are enforced simultaneously.

CONCLUSION

Whren provides no basis for relief. The petition for certiorari should be denied.

Respectfully submitted,

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